

el The Honorable Thomas S. Kelly
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WESTERN DISTRICT OF WASHINGTON
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CV 01-01081 #00000038

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

MUIO TRAN, KIM CUC NGUYEN, NHU
HUU TRAN, a minor child, LOAN HUU
TRAN, a minor child,

Plaintiffs,

v.

CITY OF SEATTLE, et al.,

Defendants.

No. CO1-1081-Z

DECLARATION OF KIRK
WALDORF IN SUPPORT OF
SUMMARY JUDGMENT

KIRK WALDORF declares as follows:

1. I make this declaration on the basis of personal knowledge and am competent to testify to the matters herein.

2 I am a patrol officer with the Seattle Police Department ("SPD"). I have worked for the SPD for almost five years

3 On or about July 19, 1999, I was working as a patrol officer in the south precinct. I was dispatched to investigate a hit and run accident. The victim of the accident described the accident, the vehicle, the driver, and also was able to give me

DECLARATION OF KIRK WALDORF IN
SUPPORT OF SUMMARY JUDGMENT - 1

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1 the vehicle's license plate number. She told me she believed the driver to be a young
2 Asian male in his late teens or early twenties and that she thought he was intoxicated.

3 4. I ran a plate check on the license plate number she gave me and located
4 the residential address of the registered owner of the car. The address was in South
5 Seattle. I decided to go there to continue my investigation and to obtain the insurance
6 information of the driver. Because the residence was located in South Seattle, I asked
7 for someone from the south precinct to assist me. Officer Little responded to the
8 dispatch.

9 5 When we arrived at the residence, we saw the suspect vehicle parked in
10 the driveway. The vehicle had marks on it that were consistent with the accident as the
11 victim described it. For example, the damage to the car was consistent with the
12 accident described, there was vomit down the side of the car, which was consistent with
13 the victim's statement that she believed the driver was intoxicated, and the license
14 plates and vehicle also matched the victim's description. Officer Little and I approached
15 the house and rang the doorbell.

16 6 A gentleman, later identified as Muio Tran, answered the door. I asked if
17 we could come in, and Mr. Tran invited us to do so. Mr. Tran indicated that the car
18 belonged to him. He denied knowing that the car had been in an accident. Because
19 he did not match the description of the driver, we asked Mr. Tran if he had a son. When
20 he said he did, I asked if we could talk with him. A woman, later identified as Kim-Cuc
21 Nguyen, retrieved the son. While I was waiting to talk to the son, Officer Little and Mr
22 Tran went outside to inspect the damage to the car
23

DECLARATION OF KIRK WALDORF IN
SUPPORT OF SUMMARY JUDGMENT - 2

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1 7 When the son came downstairs, I noted that he matched the description of
 2 the driver: an Asian male in his late teens/early twenties who appeared to be
 3 intoxicated. I asked the suspect if he had been driving recently and if he had been in an
 4 accident. He smelled of alcohol. The suspect initially denied the same, but later
 5 admitted that he had been driving. I asked him to come outside with me to inspect the
 6 car. Both he and Mr. Tran appeared to understand and to speak English.

7 8. The suspect and I were about half-way to the door when Mr. Tran came in
 8 to the residence with Officer Little. Mr. Tran ordered the suspect not to go outside with
 9 me. The suspect tensed in preparation to flee or assault me, so I grabbed the suspect's
 10 arm and told him that he was under arrest. Mr. Tran then rushed towards me and he
 11 struck me in the chest with his forearm. The suspect broke free and both he and Mr.
 12 Tran ran through the kitchen into the dining area. Officer Little and I pursued them.

13 9. In the dining area, the suspect, Mr. Tran, Kim-Cuc Nguyen, and the
 14 children all attacked us. Mr. Tran was striking us. The children were throwing things at
 15 us. Ms. Nguyen jumped on our backs and was hitting us. The suspect was also
 16 assaulting us. When I would get free of one, I would be attacked by the others. It was
 17 the same for Officer Little. Whoever was not attacking me at the time was attacking him
 18 or getting ready to attack one of us. Officer Little and I did what we could to protect
 19 ourselves and aid each other. Whenever I could get free to help Officer Little I would,
 20 and I could see that he was making the same effort. I was not carrying any pepper
 21 spray, nor was Officer Little.

22 10. I kept trying to detain these people with grappling techniques - mostly
 23 because of their age and physical size. Rather than hit them, I would push or pull them

DECLARATION OF KIRK WALDORF IN
 SUPPORT OF SUMMARY JUDGMENT - 3

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1 away from me or Officer Little and try to subdue them I did not want to use the force I
2 was capable of for fear of seriously injuring them. I kept shouting for everyone to calm
3 down. No one did. I called for back up, but no one came I later learned that the
4 dispatch operator could not hear me and so she sent everyone to the West Seattle
5 location of the hit and run, not to the South Seattle address where we actually were. I
6 also called for fast back up.

7 11 At one point, the son ran through the dining room into the kitchen, where
8 the door was located I followed him. When I got to the kitchen, he was standing there
9 with a chair raised over his head. I believe that he intended to slam the chair onto my
10 head. I tackled him to the floor. We struggled until I was able to wrap my arms around
11 his chest, pinning his arms to his side. Even then he continued to struggle. He kept
12 trying to kick me. In doing so, he kicked the glass out of the oven door All the while I
13 could hear Officer Little struggling with the others in the next room. Right about that
14 time, back up arrived and helped us to subdue the plaintiffs.

15 12. Outside of the paperwork, my involvement with plaintiffs basically ended at
16 that point. I do know that Kim-Cuc Nguyen and Muio Tran were arrested and taken into
17 custody. I believe that the children were left with relatives who were waiting outside the
18 house. I was not seriously injured by the plaintiffs, but did sustain multiple cuts and
19 scratches

20 13 I do not believe that the plaintiffs suffered any serious injuries either. They
21 did not appear to be injured, they did not complain of any injuries, and they did not
22 request medical assistance. If any property was damaged, it was plaintiffs who caused
23 it, either by breaking it themselves, or by forcing us to defend against their assaults. In

DECLARATION OF KIRK WALDORF IN
SUPPORT OF SUMMARY JUDGMENT - 4

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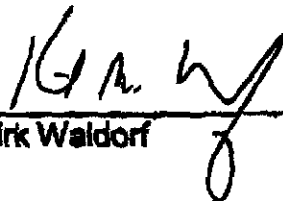
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trying to defend myself and, when I could, Officer Little, I used the least amount of force possible, even though I believe the circumstances justified my using a greater amount of force.

14. I believe that I acted reasonably under the facts and circumstances known to me at the time of this incident.

I CERTIFY under penalty of perjury under the laws of Washington State that the foregoing is true and correct.

DATED this 30 day of April, 2002.


Kirk Waldorf

DECLARATION OF KIRK WALDORF IN
SUPPORT OF SUMMARY JUDGMENT - 5

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